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## Memorandum

**TO:** HONORABLE MAYOR AND  
CITY COUNCIL

**FROM:** Leslye Corsiglia

**SUBJECT:** See Below

**DATE:** April 24, 2001

Approved

Date

05.02.01

### INFORMATION

**SUBJECT: STATUS OF CONSTRUCTION DEFECT LEGISLATION PENDING IN THE STATE LEGISLATURE**

In recent years, State legislators have introduced a number of bills designed to address concerns related to construction defect litigation. This issue is important locally, as developers are reluctant to build condominiums for fear of future litigation. Because condominiums are the most affordable for-sale housing type, the potential for construction defect legislation has an impact on the supply of ownership housing for lower- and moderate-income households.

This memo has been prepared to update the City Council on the status of construction defect legislation currently under consideration by the State Legislature. It responds to one of the recommendations of the Mayor's Housing Production Team, which requested information on this topic. The Administration has not taken a position on these bills; this memorandum is intended for information only.

### What is a Construction Defect?

Almost any condition that reduces the value of residential or commercial property or causes harm to a resident as a result of the construction can be considered a construction defect.

Construction defects can arise from: improper soil analysis/preparation; site selection and planning; architectural design; negligent construction; defective building materials; and/or civil and structural engineering. Commonly encountered construction defects include: landslides and earth movement; inadequate grading; expansive soils; improper soil compaction; faulty drainage; improper landscaping and irrigation; cracks in foundations, floors, walls and roofs; water seepage at floors, walls, windows and roofs; improper heating and ventilation; improper or defective electrical systems; defective plumbing; structural failure or collapse; dry rot, termites, harmful molds and bacteria; reduced useful life of building components; and inadequate sound control and fire protection.

## **Construction Defect Law and Legislation in California**

Law-- In the 1960s, buyers and sellers were on equal footing – meaning that the buyer assumed any risks associated with the structure when the house was purchased. Over time this has changed, with developers becoming responsible for defects, including ones that were not apparent at the time of construction or purchase.

The following are major elements of the California law regarding construction defects:

- Four-year statute of limitations for patent defects<sup>1</sup>.
- Ten-year statute of limitations for latent defects<sup>2</sup> – this can be extended if there is fraud or willful misconduct.
- No legal definition of construction defect exists in the statute.

In January 2001, the California Supreme Court sided with builders in a case regarding construction defects. The Court held that homeowners are unable to sue for economic losses in cases where no property damage or personal injury has occurred. In other words, construction defects that do not cause actual harm to people or property do not meet legal criteria for negligence lawsuits, even if the defects would appear to threaten safety. This was a victory for developers who believe that construction defect litigation unfairly penalizes them.

Legislation-- Construction defect litigation has created considerable controversy and debate, which has resulted in a large volume of legislation at the State level. Attached is a chart detailing the current bills being considered by the State Legislature.

## **Current Debates**

Each side of the debate has specific arguments regarding the need for construction defect protection.

Developers and the home building industry make the following arguments:

- Construction defect litigation is a disincentive to the creation of affordable and market rate housing
- Defects that are brought to litigation are often not truly valid defects
- Cost of insurance has risen as result of litigation
- Developers should be notified of defects before litigation is pursued

On the other side, homebuyers and homeowners make the following arguments:

- Protections need to be in place to respond to shoddy construction
- Many developers without sufficient development experience are in the market
- Tight profit margins have exacerbated the problem
- Emphasis should be on quality control

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<sup>1</sup> Patent defects are those that are readily discoverable or apparent.

<sup>2</sup> Latent defects are those that are not readily visible and could include possible failure of structure during an earthquake.

Honorable Mayor and City Council

April 24, 2001

**Subject: Status Of Construction Defect Legislation Pending In The State Legislature**

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**Coordination**

This memorandum has been coordinated with the Office of the Attorney and the Office of Intergovernmental Relations.

**Conclusion**

There are several bills currently under consideration at the State level to respond to concerns about construction defect legislation. At this time, the Administration has not recommended that the City take a position on these bills.



LESLIE CORSIGLIA  
Acting Director of Housing

Attachment

## CONSTRUCTION DEFECT LEGISLATION— 2001-02 Legislative Session

Bill/Author	Summary
AB 600 (Dutra)	<p>Existing law permits the registrar of contractors to investigate and discipline a contractor who has violated provisions of the Contractors' State License Law. This discipline can include requiring the contractor to correct construction defects that are the result of the contractor being found to have violated provisions of the Contractors' State License Law.</p> <p>This bill would:</p> <ul style="list-style-type: none"> <li>• Provide a State-sanctioned 10-year new home warranty program to provide both a process for resolving claims and a mechanism to ensure quality design and construction.</li> <li>• Establish the California Homebuyer Protection and Quality Construction Act.</li> <li>• Permit a licensed contractor to apply to the Contractors' State License Board to be certified as a participating homebuilder, which would mean that the contractor could issue a California Home Construction Warranty, as defined.</li> <li>• Require a California Home Construction Warranty to meet specified minimum standards and procedures.</li> <li>• Provide that a California Home Construction Warranty applies for a minimum of 10 years, and is binding on subsequent purchasers during the term of the warranty.</li> <li>• Define "construction defects."</li> </ul>
AB 267 (Steinberg)	<p>Existing law sets forth the statutes of limitation for bringing a cause of action for damages based on patent or latent construction defects. This bill would set forth the findings and intent of the Legislature with respect to eliminating, resolving, evaluating, and providing compensation for home construction defects.</p>
SB 355 (Escutia)	<p>Existing law states that developers who violate building codes may not be held liable for negligence unless building code violations have caused death, bodily injury, or property damage.</p> <p>This bill would provide that all persons engaged in the construction of new homes or common interest developments (i.e., condominiums) be required to adhere to the building codes applicable at the time of construction; that causes of action for construction defects based on violations of the building or other applicable codes do not require a showing of death, bodily injury, or existing property damage; that the cost of repairing the code violation is damage that may be recoverable pursuant to existing law, as specified; and that the provisions of the bill shall apply to actions arising on, before, or after January 1, 2000.</p>

<p>AB739 (Frommer)</p>	<p>This bill would extend the requirements of the process described in Section 1375 of the Civil Code which defines the process and remedies for claims against a builder of a common interest development for defects in design or construction. The bill would broaden the notice that a claimant provides to a builder to include alleged damages, lengthen the time during which a claimant is required to attempt to settle the dispute, extend the period for which all statutory and contractual limitations on actions are tolled (period of time and time limits defined in this bill), and lengthen the period during which the builder may conduct testing. This bill would further provide that the delivery of the notice to the builder from a claimant serves to initiate certain insurance obligations under the builder's insurance policy. This bill also requires that when a builder's settlement offer includes an offer to repair defects and resulting damages, the person making the claim against the builder provide the builder a reasonable opportunity to repair the defects and damages. A party to a civil action may be awarded specified attorney's fees when the party makes a settlement offer that is not accepted and the party to whom the offer is made subsequently fails to obtain a more favorable judgment.</p>
<p>AB752 (Briggs)</p>	<p>The bill adds Section 6157.6 to the Business and Professions Code. The Bill requires advertisements of a member of the State Bar who is seeking to provide legal services relating to home construction defects, disclose specified information, including expenses charged to a client, legal obligations imposed on homeowners upon a finding that their home has or may have a construction defect, and potential financial impacts that may result if a homeowner does not rectify a discovered home construction defect in his or her home. A violation of this section by a member shall be cause for discipline by the State Bar.</p>
<p>AB 1010 (Dutra)</p>	<p>This bill states legislative finding relating to a statewide housing crisis in California, the relatively low percentage of Californians able to buy median-priced homes, and the connection of construction defect litigation to a scarcity of insurance for, and construction of, condominiums and town houses. This bill states that California needs an alternative method to resolve legitimate construction disputes that will reduce litigation while protecting the rights of homeowners.</p>
<p>AB 543 (Vargas)</p>	<p>This bill would require a home improvement contract to contain provisions requiring the contractor to furnish a payment and performance bond if in a prior civil, criminal, or administrative action, as specified, the contractor was responsible for committing fraud or failing to comply with accepted trade standards for good and workmanlike construction. The bill would authorize a property owner to petition to release property from a mechanics' lien by a subcontractor, if the owner had made a payment to the prime contractor and either the payment constituted the total amount allowed to the prime contractor for the work performed by the subcontractor or the subcontractor knew the prime contractor was responsible in a prior action for committing either fraud or substandard workmanship, as previously described.</p>